
Commerce & Labor Committee

HB 2740

Brief Description: Concerning private cemeteries.

Sponsors: Representatives Hudgins, Conway and Condotta.

Brief Summary of Bill

- Grants Limited Liability Companies (LLCs) the authority to own and operate a cemetery in Washington.

Hearing Date: 1/24/08

Staff: Brian Considine (786-7290).

Background:

In Washington, corporations are expressly granted the authority to own and operate cemeteries. The cemetery statute was enacted in 1943 and sections of the Cemeteries Act were rewritten in 2005. A Limited Liability Company (LLC) is a relatively new business structure, and Washington authorized LLCs in 1994. When the law was changed in 1994, many businesses and professions were given the authority to form as a LLC. Cemeteries were not given the authority to form as a LLC.

Business Entities

Under state law, there are several different business entities that may legally exist. Some factors a business may consider when selecting its entity's structure include: limiting liability; taxation; transferability of interests; and desired level of formality.

Corporations

Corporations are formed according to formal statutorily prescribed procedures. A corporation is managed by directors and officers, but is owned by shareholders who may have very little direct role in management. A corporation exists for perpetuity unless the articles of incorporation state an ending time or event. Corporations may generally own property, sign binding contracts, pay taxes in a capacity that is separate from that of its shareholders, and the corporation is treated as a taxable entity.

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A corporation has three main characteristics: (i) transferable shares (shareholders can change without affecting its status as a legal entity); (ii) perpetual succession capacity (its possible continued existence despite shareholders' death or withdrawal); and (iii) limited liability (including, but not limited to, the shareholders' limited responsibility for corporate debt, insulation from judgments against the corporation, and shareholders' amnesty from criminal actions of the corporation).

General Partnerships

General partnerships are business entities recognized at common law that require no formal creation, are owned and managed by the same individuals, and each owner/partner is liable for the debts of the partnership. A general partnership is not a taxable entity.

Limited Liability Companies

LLCs are formed by one or more individuals or entities through a special written agreement called a certificate of formation. The agreement details the organization of the LLC, including provisions for management, assignability of interests, and distribution of profits or losses. A LLC exists for perpetuity unless the articles of formation state an ending time or event.

The main characteristics for an LLC are: limited personal liability by the members for the LLC's debts and actions (similar to a corporation); allows the owners to participate actively in management; no double taxation (profits are taxed personally at the member level, not the LLC level); and may generally own property, sign contracts, and its liability ensures members are mostly protected from acts and debts of the LLC.

Summary of Bill:

LLCs may own and operate cemeteries in Washington.

Rules Authority: The bill does not address the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.